

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RIGOBERTO JOSE MORENO,

Plaintiff,

v.

ERIC AUKEE, et al.,

Defendants.

Case No. [19-cv-04206-EMC](#)

**ORDER DENYING PLAINTIFF'S
MOTION TO RELEASE FUNDS**

Docket No. 7

Plaintiff Rigoberto Jose Moreno, proceeding pro se, filed this lawsuit against a long list of defendants. Docket No. 1. On July 31, 2019, the Court granted his request to proceed *in forma pauperis*. Docket No. 4. However, the Court dismissed his complaint under 28 U.S.C. § 1915(e) because it failed to state a claim upon which relief can be granted. *Id.* Mr. Moreno was given leave to file an amended complaint no later than August 30, 2019. *Id.* Mr. Moreno has now filed a Motion to Release Funds for Order Authorizing Distribution of Funds Held in Court by the Department of Justice. Docket No. 7.

I. DISCUSSION

Federal district courts have an affirmative duty to ensure that they have subject matter jurisdiction over the cases that come before them. *See, e.g., Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) (“When a requirement goes to subject-matter jurisdiction, courts are obligated to consider *sua sponte* issues that the parties have disclaimed or have not presented.” (citing *United States v. Cotton*, 535 U.S. 625, 630 (2002))). Because the Court previously found that Mr. Moreno’s original complaint failed to state a claim and because no amended complaint has yet been filed, the Court cannot presently ascertain whether it has subject matter jurisdiction over Mr. Moreno’s case. It is possible that the Court will have subject matter jurisdiction; thus, when he files his

1 amended complaint, Mr. Moreno is directed to ensure compliance with Civil Local Rule 3–5,
2 which requires that each complaint “identify the statutory or other basis for federal jurisdiction and
3 the facts supporting such jurisdiction.” Civ. Loc. R. 3–5. Mr. Moreno is also reminded to comply
4 with Rule 8 of the Federal Rules of Civil Procedure, pursuant to which all complaints filed in
5 federal court must contain “a short and plain statement of the claim showing that the pleader is
6 entitled to relief” and “a demand for the relief sought.” Fed. R. Civ. P. 8(a).

7 In addition, no Defendants have yet been served in this case. Nor were any Defendants
8 given notice of this motion. Civil Local Rule 7–2 requires that all motions “must be filed, served
9 and noticed in writing on the motion calendar of the assigned Judge.” Civ. Loc. R. 7–2. Because
10 Defendants in this matter have not been given notice of either the case itself or the instant motion,
11 they have not had an opportunity to be heard on the issues, and the Court finds it improper to
12 consider Plaintiff’s Motion to Release Funds at this time. As a result, the Motion to Release
13 Funds is **DENIED**, and Plaintiff is permitted to refile the motion once an amended complaint has
14 been filed and Defendants have been served. The motion should more clearly state what the
15 Funds in question are, who holds them, and what the basis of Plaintiff’s claim for those funds is.

16 II. CONCLUSION

17 For the foregoing reasons, the Court **DENIES** Mr. Moreno’s Motion to Release Funds for
18 Order Authorizing Distribution of Funds Held in Court by the Department of Justice. Mr. Moreno
19 is reminded to file an amended complaint no later than August 30, 2019; that complaint must
20 contain a short and plain statement of each claim for relief he wishes to assert, and it must identify
21 the provisions of law and the set of facts that support each claim. Furthermore, the complaint
22 should explain the Court’s jurisdiction to hear the claims asserted by Plaintiff. Should Mr.
23 Moreno again fail to comply with Rule 8 and Civil Local Rule 3–5, he risks dismissal with
24 prejudice. Mr. Moreno is forewarned that failure to file an amended complaint by the August 30,
25 2019 deadline will lead to the dismissal of his case.


26 Once again, Mr. Moreno is encouraged to seek the free information that is available to pro
27 se litigants from the Legal Help Desk. Help Desks are located at the San Francisco and Oakland
28 Courthouses and assistance is available by appointment. The San Francisco Help Desk is located

1 at 450 Golden Gate Ave., 15th Floor, Room 2796, San Francisco, CA 94102. The Oakland Help
2 Desk is located at 1301 Clay Street, 4th Floor, Room 470S, Oakland, CA 94612. Appointments
3 can be made by calling (415) 782-8982. See also <http://cand.uscourts.gov/helpcentersf>. A free
4 handbook for pro se litigants, entitled Representing Yourself in Federal Court: A Handbook for
5 Pro Se Litigants, is also available free of charge for download at
6 <https://www.cand.uscourts.gov/prosehandbook>.

7 This order disposes of Docket No. 7.

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9 **IT IS SO ORDERED.**

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11 Dated: August 23, 2019

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14 EDWARD M. CHEN
15 United States District Judge
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